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Remarks

This is a complete response to the pending Office Action mailed May 12, 2006.

At the outset, Applicant expresses appreciation for the Examiner withdrawing the final rejection and reopening the merits in response to Applicant's request.

These amendments and accompanying remarks are proper and do not add new matter, but rather more particularly point out and distinctly claim that which is the patentable subject matter in order to clarify Applicant's position that all claims are in condition for allowance. Particularly, the amendments to independent claims 1, 13, and 25 are broadening of claim scope and thereby not narrowing amendments in view of a rejection over a cited reference.

Support for new claims 35 and 36 is found from the text of the Examiner's Statement on Reasons for Allowable Subject Matter (Office Action of 5/12/2006, ppg. 8-9).

Objection to Claims

Claims 13-17 and 19 were objected to for mixing apparatus claim and method claim language together in the preamble. Applicant respectfully traverses this objection because independent claim 13 recites an apparatus comprising *circuitry* in terms of its functionality capabilities. When the structure-connoting term "circuit" is coupled with a description of the circuit's operation, sufficient structural meaning generally is conveyed to persons of ordinary skill in the art, and 35 USC § 112 ¶ 6 presumptively does not apply. *Linear Technology Corp. v. Impala Linear Corp.*, 72 USPQ2d 1065 (Fed. Cir. 2004); *Apex Inc. v. Raritan Computer, Inc.*, 325 F.3d 1364, 1373 (Fed. Cir. 2003).

Nevertheless, Applicant has amended claim 13 without prejudice to obviate the Examiner's objection by replacing "a method" with "an exit sequence," thereby more particularly pointing out and distinctly claiming the patentable subject matter of the present embodiments. Withdrawal of the present objection is respectfully requested.

Rejection Under Section 102(e)

Claims 1-3, 6, 7, 13-15, 19, and 25-34 stand rejected as being anticipated by Boutaghou '222. Applicant respectfully reiterates its earlier traversal of this rejection. (see Applicant's Response of 1/3/2006; Applicant's Response of 8/5/2004)

Claim 1

Applicant reiterates that the Examiner has not substantiated the requisite *prima facie* case of anticipation of claim 1 as previously presented because Boutaghou '222 does not identically disclose *accelerating a medium at a first acceleration rate* and *accelerating the medium at a second acceleration rate*.

The Examiner relies on col. 9 lines 9-20 of Boutaghou '222 as disclosing *accelerating a medium at a first acceleration rate*. However, this passage only describes rotating the disk at a first velocity in the range of 150 RPM to 1000 RPM, and preferably in the range of 200 RPM to 300 RPM. This passage, and indeed the entire disclosure of Boutaghou '222 is entirely silent regarding acceleration.

The Examiner relies on col. 9 lines 17-25 of Boutaghou '222 as disclosing *accelerating a medium at a second acceleration rate*. Again, Boutaghou '222 is wholly silent regarding acceleration. Particularly, Boutaghou '222 does not identically

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disclose obtaining the desired velocities by employing a *first acceleration rate* and a *second acceleration rate* as in the present embodiments as claimed.

In the absence of an Examiner's response to Applicant's previous arguments that Boutaghou '222 is wholly silent regarding acceleration, and in view of the Examiner maintaining these passages as anticipating the claimed subject matter, Applicant can only reasonably conclude that the Examiner believes, without stating so, that Boutaghou '222 discloses the *first acceleration rate* and the *second acceleration rate* by inherency. However, the Examiner has not substantiated a *prima facie* case of anticipation because he has not provided a rationale or evidence showing inherency. MPEP 2112 To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by a skilled artisan. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999) Here, because Boutaghou '222 discloses two different velocities the Examiner apparently believes it also inherently discloses two different accelerations used to reach the velocities. However, the Examiner has not met his burden of substantiating that a *first acceleration rate* and a *second acceleration rate* are necessarily present in Boutaghou '222.

Nevertheless, and solely in order to facilitate prosecution on the merits, Applicant has amended claim 1 without prejudice in order to more particularly point out and distinctly claim *subsequently accelerating the medium at a second acceleration rate different than the first acceleration rate to a second velocity....*

The Examiner has not substantiated a *prima facie* case of anticipation, and Boutaghou '222 cannot sustain any such *prima facie* case because it does not identically disclose all the features of the present embodiments as claimed. Applicant respectfully requests reconsideration and withdrawal of the present rejection of claim 1 and the claims depending therefrom.

Claim 13

For the same reasons discussed for claim 1, the Examiner has not substantiated a *prima facie* case of anticipation and Boutaghou '222 cannot sustain any such *prima facie* case because it does not identically disclose *accelerating the storage disc at a different second acceleration rate....*

Applicant also reiterates that Boutaghou '222's ramp 136 cannot reasonably be viewed as anticipating the *landing zone* of the present embodiments as claimed. Nevertheless, and solely in order to facilitate progress on the merits, Applicant has amended claim 13 in order to more particularly point out and distinctly claim a *landing zone region of the storage disc* in order to distinguish over the ramp 136 of Boutaghou '222.

Applicant respectfully requests reconsideration and withdrawal of the present rejection of claim 13 and the claims depending therefrom.

Claim 25

For the reasons discussed above for claim 1, Applicant reiterates that the Examiner has not substantiated the requisite *prima facie* case of anticipation of claim

25 because Boutaghou '222 does not identically disclose *circuitry for accelerating the medium at multiple acceleration rates....*

Again, Boutaghou '222 is wholly silent regarding acceleration, and thereby does not identically disclose *accelerating the medium at multiple acceleration rates*. The passages on which the Examiner relies (col. 9 lines 25-30, col. 10 lines 22-24, 34-37) disclose operating at different velocities but not multiple acceleration rates.

As above, in the absence of an Examiner's response to Applicant's previous arguments that Boutaghou '222 is wholly silent regarding acceleration, and in view of the Examiner maintaining these passages as anticipating the claimed subject matter, Applicant can only reasonably conclude that the Examiner believes, without stating so, that Boutaghou '222 discloses the *multiple acceleration rates* by inherency. However, the Examiner has not substantiated a *prima facie* case of anticipation because he has not provided a rationale or evidence showing inherency. MPEP 2112 To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by a skilled artisan. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson* Here, because Boutaghou '222 discloses two different velocities the Examiner apparently believes it also inherently discloses two different accelerations used to reach the velocities. However, the Examiner has not met his burden of substantiating that *multiple acceleration rates* is necessarily present in Boutaghou '222.

Applicant respectfully requests reconsideration and withdrawal of the present rejection of claim 25 and the claims depending therefrom.

Allowable Subject Matter

Applicant gratefully acknowledges the indication of allowability for claims 4, 5, 16, and 17. However, Applicant has opted to not place these claims in independent form because the independent claims from which they depend are allowable, as discussed above.

New Claims

New claims 35 and 36 are allowable as indicated by the Examiner's Statement of Reasons for Allowable Subject Matter (Office Action of 5/12/2006, ppg. 8-9)

Particularly, claims 35 and 36 are patentably distinct over the art of record which does not disclose or suggest *accelerating the medium at multiple acceleration rates within predetermined time intervals* as claimed.

Conclusion

This is a complete response to the pending Office Action of 5/12/2006.

Applicant has also filed herewith a Request for Telephone Interview to be held before the Examiner makes the next action on the merits. The interview is necessary, absent allowance, to attempt to resolve issues where the prolonged prosecution in this case has already unduly delayed the issuance to Applicant of valuable patent rights.

Should any questions arise concerning this application, the Examiner is encouraged to contact the below signed attorney.

Respectfully submitted,

By:

Mitchell K. McCarthy, Registration No. 38,794
Randall K. McCarthy, Registration No. 39,297
Fellers, Snider, Blankenship, Bailey & Tippens
100 North Broadway, Suite 1700
Oklahoma City, OK 73102-8810
Telephone: (405) 232-0621
Fax: (405) 232-9659

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